

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TINA LYNN CLAY,

Defendant-Appellant.

UNPUBLISHED

May 7, 1999

No. 207981

Saginaw Circuit Court

LC No. 97-013392 FH

Before: Wilder, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of prison escape in violation of MCL 750.193; MSA 28.390. Defendant, a fourth habitual offender, MCL 769.12; MSA 1084, was sentenced to serve an enhanced sentence of twenty months to fifteen years' imprisonment, to be served consecutive to the sentence she had been serving when she escaped. The charges arose when defendant, without permission, walked away from the Arete Community Corrections Center, a substance abuse treatment center for prisoners. We affirm.

Defendant first claims that the court erred in denying her motion for a directed verdict of acquittal at the close of the prosecution's proofs. Defendant argues that the prosecution failed to present sufficient evidence to support a finding that the facility from which she escaped was a "prison" for purposes of the prison escape statute. MCL 750.193; MSA 28.390. We disagree.

This Court reviews the denial of a motion for directed verdict de novo. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). The Court must consider the evidence in the light most favorable to the prosecution, and determine whether a rational jury could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Vincent*, 455 Mich 110, 121; 565 NW2d 629 (1997).

Defendant was a prisoner at the Buena Vista Corrections Center when she was transferred to the Arete Community Corrections Center for substance abuse treatment. The dispositive issue is whether defendant escaped from "prison" when she walked away from the Arete Center. "Prison," for purposes of the prison escape statute, includes a facility under the control of "any other person

authorized by the department to have a prison inmate under care, custody, or supervision . . . whether for the purpose of work, *medical care*, or *any other reason*.” MCL 750.193(2); MSA 28.390(2) (emphasis added). For purposes of the Michigan Penal Code, “person” includes “public and private corporations, copartnerships, and unincorporated or voluntary associations.” MCL 750.10; MSA 28.200. A Buena Vista corrections officer testified that Buena Vista had a contractual relationship with the Arete Center for the treatment of Buena Vista prisoners. A rational factfinder could conclude that Buena Vista was authorized by the Department of Corrections to enter into such a contract. Taken in the light most favorable to the prosecution, there was sufficient evidence from which a jury could conclude that defendant escaped from a facility under the control of a “person” contractually authorized by the Department of Corrections to have prisoners under its care. Therefore, the trial court did not err in denying defendant’s motion for a directed verdict of acquittal.

Defendant next claims that the trial court erred in failing to instruct the jury regarding the requisite intent required to support a conviction for prison escape. In order to preserve an instructional issue for appellate review, a party must make an objection on the record before the jury retires to consider the verdict, stating specifically the matter to which the party objects and the grounds for the objection. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). In this case, defendant failed to object to the instruction. Consequently, absent an objection, relief will be granted only to avoid manifest injustice. *Id.* We find no such manifest injustice because the trial court properly instructed the jury.

Prison escape is not a strict liability crime. Rather, the prosecution is required to prove that a defendant “intended to escape from known confinement.” *Peovole v Benevides*, 204 Mich App 188, 192; 514 NW2d 208 (1994). Stated another way, a defendant possesses the requisite intent when he “removes himself from the imposed restraint over his person and volition with knowledge of, and intent to remove himself from, the restraints imposed.” *Id.*, quoting *People v Marsh*, 156 Mich App 831, 834; 402 NW2d 100 (1986).

Jury instructions, reviewed as a whole, must include all elements of the charged offense, and they may not omit material issues, defenses, and theories if they are supported by the evidence. *People v Piper*, 223 Mich App 642, 648; 567 NW2d 483 (1997). Imperfect instructions do not require reversal so long as they fairly present the trial issues to the jury and they adequately protect the defendant’s rights. *Id.* This Court will not reverse a conviction or order a new trial on the ground of misdirection of the jury, unless the claimed error resulted in a miscarriage of justice. MCL 769.26; MSA 28.1096; *People v Hall*, 435 Mich 599, 603-604; 460 NW2d 520 (1990). “A miscarriage of justice, or manifest injustice, occurs when an erroneous or omitted instruction pertained to a basic and controlling issue in the case.” *People v Bartlett*, 231 Mich App 139, 144; 585 NW2d 341 (1998), citing *People v Johnson*, 187 Mich App 621, 628; 468 NW2d 307 (1991).

In the present case, the trial court did not include intent as one of the general elements of prison escape. However, prior to setting forth these elements, the court instructed the jury that the prosecutor was not required to prove motive but was merely required to show that the defendant committed the charged crime and that the defendant *meant to do so*. This instruction adequately conveyed the requisite intent requirement to the jury, that is, that defendant “intended

to escape from a known confinement.” *Benevides, supra* at 192. Therefore, defendant has failed to show manifest injustice.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Mark J. Cavanagh

/s/ Brian K. Zahra